

---

Volume 60

Issue 3 *Issue 3: Innovations in the Fight Against  
Human Trafficking* & Issue 4: *Select Legal  
Scholarship from the New York Law School Law  
Review*

Article 2

---

January 2016

## The Next Fifteen Years

MELYNDA BARNHART

*Former Professor of Law at New York Law School*

Follow this and additional works at: [https://digitalcommons.nyls.edu/nyls\\_law\\_review](https://digitalcommons.nyls.edu/nyls_law_review)



Part of the [Human Rights Law Commons](#)

---

### Recommended Citation

MELYNDA BARNHART, *The Next Fifteen Years*, 60 N.Y.L. SCH. L. REV. (2015-2016).

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.

MELYNDA BARNHART

## The Next Fifteen Years

60 N.Y.L. SCH. L. REV. 585 (2015–2016)

ABOUT THE AUTHOR: Melynda Barnhart, formerly Professor of Law at New York Law School, has advocated on behalf of human trafficking survivors for over sixteen years. Ms. Barnhart has pressed for greater human rights protections for human trafficking victims before the U.S. Congress, the United Nations, and other local, national, and international fora. Before she joined academia, she served as the Director of Anti-Trafficking Initiatives for the International Rescue Committee, where she oversaw a national service program that assisted more than 200 trafficking survivors to rebuild their lives. From 2003 to 2005, she developed and ran one of the first statewide comprehensive service programs for trafficked persons in the United States and trained thousands of attorneys, law enforcement personnel, governmental staff, and social workers on how to handle trafficking cases. She would like to thank her research assistants, Devi Patel and Fema Birch, for their excellent research and the ideas they contributed to this article. She thanks Anne Goldstein and Suzanne Tomatore for their feedback on earlier drafts of this article and her symposium co-chairs, Chaumtoli Huq and Frank Munger, for their creativity and dedication in putting on the symposium. She thanks all of the presenters and participants at the symposium for bringing innovative ideas to the table. Finally, she thanks her mentors, friends, and colleagues from the Freedom Network, without whom the trafficking movement could not truly be called a human rights movement.

## I. INTRODUCTION

Sixteen years after the passage of the 2000 Trafficking Victims Protection Act (TVPA)<sup>1</sup> the movement for greater rights and protections for trafficked people has developed a solid foundation in law and practice. Every state in the country now has some type of law addressing human trafficking. Local, state, and federal networks of dedicated non-governmental organization (NGO) advocates, law enforcement personnel, and survivors respond every day to new cases and challenges. This system of survivor assistance and prosecution of traffickers is firmly established.

Now that our movement has reached its teenage years, we must grapple with deeper questions: how to strengthen often-tenuous cooperation between organizations with varying viewpoints and missions, how to provide effective support for foreign-born survivors and prevent international trafficking within a complex sea of laws and regulations, and how to engage the private sector in detecting and preventing trafficking within its ranks. We are still envisioning what the movement will become, forming our ideals and goals based on experience, and bringing the movement to a greater level of understanding and maturity.

One of the largest challenges to the movement has been bringing together disparate communities who are often in conflict—survivors; law enforcement; social and legal services; medical and mental health professionals; workers; and different racial, ethnic, religious, national, and linguistic groups. Representatives of many of these groups work together, even if progress is sometimes difficult. Today, an anti-trafficking lens is used in workers' rights communities and corporate responsibility activism. As the rhetoric around trafficking shifts to incorporate a greater understanding of the role of slavery and servitude in our society, we will begin to see more possibilities for connection and to reach more people seeking freedom.

The driving concept behind the 2014 *New York Law School Law Review* symposium on human trafficking was bringing together the real experts on human trafficking in the United States—the people and organizations working directly with trafficked people. We wanted to start conversations among these forerunners to spark new ideas and push beyond the tried and true methods of anti-trafficking work. Thus, we invited innovators in the field, those who had distinguished themselves with successful, out-of-the-box approaches to cases and who were creating real transformation in the movement. We invited those who brought labor, movement organizing, research, and human rights perspectives.

In the end, we gathered more than one hundred innovators and created a space for inspiration, community, and brainstorming. So often, these experts are the

---

1. Trafficking Victims Protection Act, Pub. L. No. 106-386, 144 Stat. 1464 (codified at 22 U.S.C. §§ 7101–7112 (2015)). This Act, the first piece of federal legislation specifically addressing human trafficking, focused on what have become known as “the three Ps”: (1) prevention, in the form of aid to other countries to assist those vulnerable to trafficking and sanctions against countries not working to prevent trafficking; (2) prosecution, in the form of criminal penalties for the newly designated crimes of human trafficking; and (3) protection, in the form of assistance to victims of trafficking, civil remedies for trafficked people, and immigration status for foreign victims. See U.S. DEP’T OF STATE, THE 3PS: PREVENTION, PROTECTION, PROSECUTION (2011).

educators and organizers at trafficking-related conferences, and they rarely have an opportunity to talk to each other and listen. Having a deeply informed audience for the morning's panels produced a unique setting for assessing the progress of advocacy and recommending ways forward. One session of the day transformed every attendee into a presenter through an "open-source discussion." The walls of the room were lined with large sheets of paper, and attendees were encouraged to list innovations they wanted to brainstorm. People discussed and wrote down their ideas. The final panel of the symposium consisted of remarks from several participants on how the ideas from these subgroups could be implemented in the future. This article is not intended to serve as an exhaustive list of the symposium's discussion topics.<sup>2</sup> The suggestions in this article should be viewed as a starting point for discussion based upon where we are today, and how we may be most effective moving forward.

This article addresses three of the primary themes of discussion and some of the future innovations suggested, with additional commentary and background based upon my understanding of the ideas raised. Part II examines the first theme, engagement with government institutions, an integral part of anti-trafficking work in the United States for almost two decades. While some of these innovations reflect ongoing relationships and processes, breakthroughs in these relationships are critical to the success of anti-trafficking efforts. Part III explores the relationship between the U.S. immigration system and foreign-born trafficking survivors and focuses on how to improve upon existing efforts to protect those survivors. Part IV emphasizes the growing shift towards intersectionality and a human rights focus in discussions of human trafficking, so that government policies, media reports, and funding applications may reflect the lived realities of human trafficking survivors. Finally, Part V serves as a conclusion to the discussion, looking even further ahead at innovations yet to be formed.

## II. ENGAGEMENT WITH GOVERNMENT INSTITUTIONS

The TVPA encouraged governmental and non-governmental actors to respond to human trafficking cases collaboratively. Many of the symposium's participants

---

2. Although furthering private sector engagement was a theme addressed by participants, it will not be discussed in depth in this article. For example, the idea of criminally prosecuting corporations for trafficking violations is a future innovation that merits significant further discussion beyond the scope of this article. In his presentation to the symposium, Dan Werner discussed the innovation of engaging private law firms to assist in civil litigation against traffickers. Dan Werner, Supervising Att'y, Southern Poverty Law Ctr., Comments at the New York Law School Law Review Symposium: Innovations in the Fight Against Human Trafficking (Oct. 10, 2014), <https://youtu.be/5UPgZD7Jhok?t=21m51s>. The subsequent settlement of a large civil labor trafficking case managed by Werner and the Southern Poverty Law Center, in concert with private firms, ably demonstrates the utility of this engagement. For more details on the Signal International case and settlement, see *\$20 Million Settlement Agreement Reached in Labor Trafficking Cases Coordinated by SPLC on Behalf of Exploited Indian Guest Workers*, SOUTHERN POVERTY L. CTR. (July 13, 2015), <https://www.splcenter.org/news/2015/07/14/20-million-settlement-agreement-reached-labor-trafficking-cases-coordinated-splc-behalf>.

## THE NEXT FIFTEEN YEARS

discussed these collaborations.<sup>3</sup> On paper, a “victim-centered approach” would guarantee that a close-knit task force of trafficking specialists from different law enforcement organizations and comprehensive community service organizations would support trafficking survivors, ready to tend to their needs as they rebuild their lives. In practice, this has been difficult to achieve at both the local and the federal level. Below are some ideas for making these relationships more effective for trafficked people.

### *A. Innovation: Increasing Communication and Relationship Building Between Members in Anti-Trafficking Task Forces*

While many law enforcement and service providers have been thrown together by mutually beneficial federal grants, development of effective working relationships between groups who are often at odds in other contexts is challenging. Broad-based innovation can be particularly difficult within the narrow confines of federally mandated grant activities. Increasing effective communication between members is critical, and remains an oft-repeated goal of all sides. Moving forward, innovations and breakthroughs in such communication should be widely circulated as ideas for best practices.

On the NGO side, many community organizations working with marginalized people, such as sex workers, domestic violence and sexual assault survivors, and migrants, tend to have a learned distrust of law enforcement and government actors. These organizations may be deeply involved in advocacy efforts to change government policies that harm the populations they serve, and may have adversarial relationships with governmental actors outside the trafficking context. Most anti-trafficking advocates from law enforcement agencies (“LEA”) and NGO communities gracefully move beyond these traditional lines to work together, but the lines sometimes remain as a shadow over communication.

### *B. Innovation: Training Local and State Law Enforcement Agents and Prosecutors to Detect, Investigate, and Prosecute Labor Trafficking*

Federal grants for anti-trafficking projects often require local police departments to take the lead in order for service providers to receive funding. As most local law enforcement departments do not have jurisdiction to investigate civil labor violations, they assign anti-trafficking investigations to vice squads. Thus, local anti-trafficking investigators tend to be those well versed in prostitution stings—not sweatshop raids—who sway investigations toward fighting “sex trafficking.” As discussed below,<sup>4</sup> this tendency intersects with the “rescue” rhetoric surrounding human trafficking in popular imagination, and so law enforcement may not understand why shifting investigations beyond the stereotypical victims of sex trafficking is important.

---

3. See Frank W. Munger, *Advocacy at the Leading Edge of Social Change: The Importance of Front Line Innovators*, 60 N.Y.L. SCH. L. REV. 567 (2016); see also Tiffany Williams & Leah Obias, *An Organizing Approach to Human Trafficking in Domestic Work*, 60 N.Y.L. SCH. L. REV. 649 (2016).

4. See *infra* Part IV.A.

Promoting the capacities of local and state law enforcement agencies to undertake labor trafficking investigations and prosecutions is a necessary innovation. The most basic suggestion from the symposium was simply to find interested officers and cultivate their skills to investigate labor trafficking cases. Most officers have never investigated labor trafficking, which may require gathering different types of evidence and utilizing different interviewing techniques. Officers may need to collaborate with their civil law enforcement counterparts in workplace regulation, wage and hour enforcement, and other labor related areas. While this approach has certainly been effective in some communities, the relative frequency of turnover in law enforcement assignments may contribute to the instability of relationships and common goals, making this type of training investment risky for NGO advocates.

Training prosecutors to bring labor trafficking cases might be a more effective focus, as local and state prosecutors often have greater flexibility in choosing which cases to prosecute and which provisions to charge. Prosecutors are likely to charge defendants in trafficking cases with criminal provisions they are familiar with, such as kidnapping or rape, rather than relatively untested trafficking provisions. Over time, creating specialties through education will ensure that prosecuting agencies bring more labor trafficking cases.

Additionally, involving the state counterparts of federal labor violation investigating agencies, such as the Department of Labor and the Equal Employment Opportunity Commission, in task forces can expand capacity. Not only can those state agents speak the language of local law enforcement, but in some cases they might also work within the same departments. Engaging other state actors in the education of law enforcement investigators might also prove more effective in the long term because it would demonstrate internal agreement on government priorities between departments.

*C. Innovation: Increasing International Intelligence Cooperation to Better Identify Trafficking Networks and Assist Victims*

This innovation involves harnessing growing international cooperation and data sharing to counter human trafficking. The U.S. Department of State has been seeking better coordination and information sharing among countries regarding human smuggling and trafficking.<sup>5</sup> This model of international cooperation, if effective, could be explored in greater depth and expanded to include participation of relevant NGOs. Greater intelligence cooperation between countries involved in individual trafficking cases might help to locate and bring down trafficking networks. Coordination will be challenging—particularly because the same countries are involved in most cases as source, transit, or destination countries.

---

5. See *Human Smuggling and Trafficking*, U.S. DEP'T ST., <http://www.state.gov/m/ds/hstcenter/> (last visited Apr. 20, 2016).

*D. Innovation: Requiring Local Law Enforcement to File Supportive Certifications for Trafficking Survivors' Visa Applications*

One regular point of contention in law enforcement-advocate engagement is the “strongly encouraged” requirement that foreign-born trafficking survivors demonstrate their cooperation with a trafficking investigation to qualify for a T visa.<sup>6</sup> So far, a decade of advocacy attempts to completely eliminate the law enforcement cooperation requirement from visa applications has failed, although the requirement has been tempered.<sup>7</sup> When creating the T visa in the TVPA, Congress provided that a trafficked person must report her case to law enforcement and prove that she had complied with “any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking.”<sup>8</sup> Primary evidence of this assistance in the form of endorsement by a law enforcement officer, demonstrating that—in the officer’s opinion—the person was trafficked is often needed to satisfy the “cooperation” requirement.<sup>9</sup> Thus, in order for a survivor to file her application for immigration protection, she must not only report her victimization to law enforcement but also convince law enforcement to write such a declaration on her behalf. She cannot file an application for immigration protection until she has obtained such a declaration, which is often difficult.<sup>10</sup>

In the short term, innovations on this issue will continue to develop through better communication and coordination with law enforcement officials involved in

6. *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 3, 2011), <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>. The T visa application form includes the Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. Although the U.S. Citizenship and Immigration Services Office states that the Supplement B is optional, it is “strongly encouraged.” *Id.*
7. The cooperation with law enforcement requirement for a T visa is waived in cases where the person was under the age of eighteen when victimized or is unable to cooperate due to physical or psychological trauma. *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status-0> (last visited Apr. 20, 2016).
8. 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa) (2012).
9. 8 C.F.R. § 214.11(h)(1) (2014). Formerly trafficked persons are also able to obtain a T visa by submitting “secondary evidence,” in the form of an affidavit. However, this “secondary evidence” must “show nonexistence or unavailability of the primary evidence and . . . otherwise establish the requirement that the applicant comply with any reasonable request.” *Id.* § 214.11(h)(2). In addition to providing this secondary evidence, individuals must also demonstrate that they made a “good faith” effort to obtain primary evidence. *Id.*; see also U.S. DEP’T OF HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, [https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide\\_1.4.16.pdf](https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf) (last visited Apr. 20, 2016).
10. Similar certifications are required for U visa applicants. See 8 C.F.R. § 214.14(c)(2) (2014). A recent NPR article detailed the difficulties advocates and their clients face in obtaining such assistance, despite the statements from law enforcement about how helpful they found the process to be for their investigations. See Hansi Lo Wang, *Immigration Relief Possible in Return for Crime Victims’ Cooperation*, NPR (Jan. 22, 2016, 1:36 PM), <http://www.npr.org/2016/01/20/463619424/immigration-relief-possible-in-return-for-crime-victims-cooperation>.



trafficking cases. Changing the opinion of an investigator or prosecutor about whether a person is a trafficking survivor can be challenging. Sometimes it may simply be difficult to get a response from overburdened officers or to obtain permission to submit a declaration from uninformed superiors. This could delay a trafficking survivor's application for a visa.

One significant recent advance is that the proposed Uniform Act on the Prevention of and Remedies for Human Trafficking ("Uniform Act") also includes a provision requiring law enforcement certification in trafficking cases.<sup>11</sup> A few states, such as California, have taken the lead by requiring law enforcement to provide endorsements within particular timeframes.<sup>12</sup> As states begin to adopt the Uniform Act, this provision will bring some needed legal backing to survivor requests for LEA certifications. Task force members can then advocate for the drafting of policies consistent with that provision. Even in the absence of the Uniform Act, advocates can seek legislative or policy changes to ensure that the need for certifications in trafficking cases is clear.

*E. Innovation: Increasing Effectiveness of Existing Asset Forfeiture Laws*

Another line of suggestions for greater effectiveness of LEA-NGO collaborations considered the issues of asset forfeiture and criminal restitution for trafficking victims. Forty-four states and the District of Columbia currently have asset forfeiture laws allowing them to seize the assets of alleged and convicted traffickers.<sup>13</sup> The ubiquity of such provisions means that asset forfeiture will likely be a part of any human trafficking case. One key issue raised by advocates and survivors is that these laws tend to funnel forfeiture monies to law enforcement agencies or general crime victim funds rather than directly restoring ill-gotten gains to trafficking survivors.<sup>14</sup> While the complexities of asset forfeiture and their impact on trafficked people are beyond the scope of this article, the suggestion that forfeited assets in trafficking

- 
11. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING 14–15 (2013). The Uniform Act on the Prevention of and Remedies for Human Trafficking, finalized in 2013 by the National Conference of Commissioners on Uniform State Laws, is a comprehensive draft of state-level legislation on human trafficking. The Uniform Act contains provisions regarding criminal definitions, penalties, and defenses; eligibility for state services; civil actions; restitution and forfeiture; business entity liability; and more. The Uniform Law Commission advocates for states to adopt this draft legislation in order to create uniformity amongst state trafficking laws. *Id.*
  12. CAL. PENAL CODE § 236.5(a) (West 2009) (requiring law enforcement to provide the LEA endorsement within fifteen days of encountering a trafficked person).
  13. HUMAN TRAFFICKING ISSUE BRIEF: ASSET FORFEITURE, POLARIS PROJECT (2015), <https://polarisproject.org/sites/default/files/2015%20Asset%20Forfeiture%20Issue%20Brief.pdf>.
  14. For example, California distributes forfeited funds from human trafficking cases equally to the agency that secured the forfeiture and to the Victim-Witness Assistance Fund to be used for grants to community-based organizations serving trafficking victims. CAL. PENAL CODE § 236.12(b) (West 2013); see also *Asset Forfeiture State Index*, SHARED HOPE, [http://sharedhope.org/wp-content/uploads/2012/09/Asset\\_forfeitures.pdf](http://sharedhope.org/wp-content/uploads/2012/09/Asset_forfeitures.pdf) (last visited Apr. 20, 2016) (noting, as of 2012, where forfeited monies are to be distributed in the nineteen states with such statutes).



## THE NEXT FIFTEEN YEARS

cases could be better distributed to the actual victims is well taken.<sup>15</sup> Advocates from the community and from within law enforcement agencies could work together to effectuate changes in how those funds are distributed locally.

### *F. Innovation: Creating and Enforcing Restitution Awards for Trafficking Victims*

Moving beyond forfeiture, actual restitution awards made and enforced by courts could be tremendously helpful to trafficked people. Martina Vandenberg has ably discussed the role of restitution in federal trafficking cases.<sup>16</sup> Innovations and ideas raised by other symposium participants focused on the fact that many of the state laws in this area are relatively new and untested and that making awards mandatory in law, or routine in local practice, will require coordinated efforts. Where awards are granted, enforcement is necessary to move the orders beyond mere promises. Allowing enforcement of federal judgments in state courts might increase the likelihood of trafficked people receiving restitution, as would allowing attachment of assets for civil and criminal restitution awards. All of these ideas are likely areas of expansion within LEA-NGO task forces.

## III. ENGAGEMENT BETWEEN IMMIGRATION AUTHORITIES AND FOREIGN-BORN TRAFFICKED PEOPLE

Unsurprisingly, many of the immigration lawyers at the symposium expressed deep dissatisfaction with the current system of issuing protective legal immigration status for trafficking survivors. Several of the suggestions echoed greater immigration reform efforts. Ideas included demilitarizing U.S. borders, ending immigration detention, providing gradient consequences for violations of immigration laws rather than mandatory deportation, ending diplomatic immunity for traffickers, and including poverty as grounds for asylum. These suggestions all have a direct bearing on the anti-trafficking movement because the difficulty of migrating to the United States is a vulnerability that leads to trafficking. Whether people migrate legally or illegally, they encounter the negative effects of the broken immigration system. Traffickers use the constant threat of deportation, which hangs over every migrant in a country that effectuates between 200,000 to 400,000 removals annually,<sup>17</sup> to their advantage. Thus, reforms of the immigration system as a whole may lead to a lessening of those vulnerabilities and allow more people to migrate free from trafficking.

---

15. Observations and recommendations made by the UN Special Rapporteur on Trafficking in Persons regarding the use of restitution awards in the United States raised some concerns about whether restitution is sufficient to assist trafficked people, as returning them to a pre-existing situation may only increase or exacerbate vulnerabilities without broader measures to address root causes of trafficking. Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children* ¶ 20–23, U.N. Doc. A/HRC/17/35 (Apr. 13, 2011).

16. Martina Vandenberg, *Innovations in the Fight against Human Trafficking: Listening to Trafficking Survivors, Fighting for Justice*, 60 N.Y.L. SCH. L. REV. 631 (2016).

17. U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGRATION AND CUSTOMS ENF'T, ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT 2 (2015).

*A. Innovation: Improving Access to and Benefits of Protective Visas*

Many of the suggested remedies can be implemented through policy or statutory changes in the absence of comprehensive immigration reform. Several suggestions relating directly to the granting of protective visas, specifically of the T and U variety, are likely to garner congressional attention and possible approval (even in an election year).<sup>18</sup>

The most practical suggestion was to waive application fees for visa applications on behalf of family members of trafficked people.<sup>19</sup> While fee waivers are available to primary applicants for T and U visas,<sup>20</sup> secondary applications for family members to join often do not have waivers, and the fees can be prohibitive to trafficked people rebuilding their lives.<sup>21</sup>

Next, it was suggested that upon a prima facie showing of eligibility for one of these visas, the potential recipient should be issued work authorization. As discussed in greater depth below,<sup>22</sup> a trafficked person would ideally be granted work authorization pursuant to Continued Presence status at the request of federal law enforcement as soon as she is identified as a trafficked person. Trafficked people who do not have Continued Presence status must wait for a T or U visa to be eligible for work authorization.<sup>23</sup> The application process for a T or U visa can take months or years, and allowing applicants who show basic eligibility for the visa to work would help survivors and their families to become self-sufficient more quickly. Granting work authorization based on prima facie eligibility is also consistent with other types of protective visas. For example, work authorization is regularly granted for those

---

18. T visas are the primary form of immigration protection for trafficked people and their family members, providing four-year temporary status with work authorization and the ability to apply for permanent residency. *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, *supra* note 7. U visas provide temporary status for victims of enumerated violent crimes, including trafficking, and also offer the option of applying for permanent residency and status to certain family members. *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last visited Apr. 20, 2016).

19. For a comprehensive list of visa fees, see *Fees for Visa Services*, U.S. DEP'T ST., <http://travel.state.gov/content/visas/en/fees/fees-visa-services.html> (last visited Apr. 20, 2016).

20. 8 C.F.R. § 103.7(c)(3)(xviii) (2014).

21. *Fee Waiver Guidance*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/feewaiver> (noting that fee waivers are granted at the discretion of the U.S. Citizenship and Immigration Services Office) (last updated Sept. 4, 2015); *see also supra* note 19.

22. See *infra* Part III.C for a more in-depth discussion of Continued Presence.

23. The primary avenues for obtaining employment authorization through immigration relief are Continued Presence, a T visa, or a U visa. While a trafficked person can become "certified" by the Department of Health and Human Services for social services based upon a grant of Continued Presence, or a filed application for a T visa, they can only receive work authorization when they are actually granted one of the three immigration statuses. See *Fact Sheet: Victim Assistance*, U.S. DEP'T HEALTH & HUM. SERVS. (Aug. 7, 2012), [https://www.acf.hhs.gov/sites/default/files/ort/victim\\_assistance\\_fact\\_sheet\\_english.pdf](https://www.acf.hhs.gov/sites/default/files/ort/victim_assistance_fact_sheet_english.pdf).

## THE NEXT FIFTEEN YEARS

awaiting determination of asylum applications after 180 days;<sup>24</sup> people with other protective statuses similarly deserve work authorization.

### *B. Innovation: Regulating Foreign Labor Recruitment*

Recent allegations of abuse of labor visas involving large corporations and diplomats have renewed calls within the anti-trafficking movement for greater implementation of labor standards in the issuance of temporary working visas.<sup>25</sup> While reviewing thousands of visa applications per year presents challenges, some reforms could have preventative effects.

One set of suggested innovations from the symposium involved applying the model of successful regulation of international marriage brokers to foreign labor recruitment.<sup>26</sup> Creating a system of background checks on prospective employers, including registration of recruitment providers with full disclosure of those background checks, would allow potential migrants to evaluate risks of employment and to know more about the employer's labor practices. Just as a potential spouse would want to know if her prospective mate had a history of domestic violence convictions, a potential worker should be able to discover a potential employer's history of labor violations. The system could also require the posting of a bond to defray any damages for workers injured or abused in the workplace.

The Department of Labor, which currently provides limited oversight of work visas through the labor certification process, could be assisted by the Department of State, in partnership with migrant worker centers here and abroad, to better detect trafficking networks. A system of checks would be particularly helpful to those who often work in abusive conditions, such as domestic workers, au pairs, and migrant farm workers. Such safeguards could provide a method to separate legitimate visa applications from those sponsored by traffickers. While no such system would be perfect—particularly since many migrant workers are indirectly employed via labor contractors—educating employers about employment rights of workers in the United States could deter abuse by employers and recruiters. Hopefully, recent successful civil suits against employers of trafficked workers will have some related deterrent effect,<sup>27</sup>

---

24. U.S. CITIZENSHIP AND IMMIGRATION SERVS., EXEC. OFFICE FOR IMMIGRATION REVIEW, THE 180-DAY ASYLUM EAD CLOCK NOTICE, [http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum\\_Clock\\_Joint\\_Notice\\_Revised\\_Adj\\_Code\\_Chart\\_01-30-15.pdf](http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice_Revised_Adj_Code_Chart_01-30-15.pdf) (last visited Apr. 20, 2016).

25. See Jenny Brown, *Hershey's Walkout Exposes J-1 Guestworker Scam*, LAB. NOTES (Aug. 25, 2011), <http://labornotes.org/2011/08/hershey%E2%80%99s-walkout-exposes-j-1-guestworker-scam>; see also Benjamin Weiser & Vivian Yee, *Claim Against Indian Diplomat Has Echoes of Previous Cases*, N.Y. TIMES (Jan. 9, 2014), [http://www.nytimes.com/2014/01/10/nyregion/claims-of-diplomats-mistreating-household-staff-are-far-from-the-first.html?\\_r=0](http://www.nytimes.com/2014/01/10/nyregion/claims-of-diplomats-mistreating-household-staff-are-far-from-the-first.html?_r=0).

26. See generally International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162, §§ 831-834, 119 Stat. 2960 (codified at 8 U.S.C. § 1375a(d)).

27. See, e.g., Liam Stack, *Indian Guest Workers Awarded \$14 Million*, N.Y. TIMES (Feb. 18, 2015), <http://www.nytimes.com/2015/02/19/us/indian-guest-workers-awarded-14-million.html>; see also Weiser & Yee, *supra* note 25. See generally KATHLEEN KIM & DANIEL WERNER, LEGAL AID FOUND. OF L.A., CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING (2005).

but strong signals from federal enforcement authorities would strengthen the anti-trafficking message.

*C. Innovation: Increasing Use of Continued Presence Status for Potentially Trafficked People*

One final innovation in the immigration status arena simply involves enforcement of existing law. The 2000 TVPA created a temporary form of deferred action called Continued Presence, which can only be sought or granted by federal law enforcement.<sup>28</sup> Continued Presence grants the trafficked person work authorization, eligibility for social services assistance, and authorized legal presence in the United States while a trafficking case is being investigated and prosecuted.<sup>29</sup> The requirements for receiving this status are relatively few and easy to attain as compared to those of a T or U visa.<sup>30</sup> The status was designed as a way for law enforcement to ensure that a trafficked person could remain legally in the United States until she is determined not to have been trafficked or she obtains other immigration relief. Trafficked people who apply for Continued Presence are almost immediately able to start recovering. Without Continued Presence, the wait for work authorization or comprehensive social services can take months or years, an extremely long time for a traumatized person to be in legal limbo.

Suggestions for expanding Continued Presence focused on spreading the word through educational programs. Engagement of community, law enforcement, and anti-trafficking leaders to discuss why Continued Presence is important could help to change local perception and awareness. Grassroots educational campaigns in multiple languages could broaden awareness that the status exists, possibly encouraging more trafficked people to come forward. Ideas regarding the application of legal pressure to award Continued Presence included granting the Department of Labor the power to issue the status, or simply requiring federal law enforcement working on potential trafficking cases to always apply for continued presence.

#### IV. SHIFTING THE RHETORIC TOWARDS REALITY

Most trafficked people are victimized during their attempts to make a better life for themselves and their families. Those who assist trafficked people in their recovery and growth are focused on helping them to achieve those goals on an individual and a global scale. While the discussion at the symposium highlighted the ever-present problems with the dominant rhetoric of “rescue” and “ending demand,” there were some creative suggestions for shifting the narrative. The primary themes were (1) including the lived experiences and voices of trafficked people in the discussion, and (2) examining the legal and social structures that lead to trafficking. The community

28. 22 U.S.C. § 7105(b)(1)(E)(i)(bb) (2012).

29. 28 C.F.R. § 1100.35 (2012).

30. See U.S. DEP'T OF HOMELAND SEC., CONTINUED PRESENCE: TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING (July 2010), <https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

## THE NEXT FIFTEEN YEARS

that came together at the symposium focused largely on how to redirect traditional narratives toward the recognition of the underlying causes of vulnerability to trafficking. Moving forward, addressing intersectional systems of oppression, and seeking to prevent harm through empowerment of all people were identified as hopes and dreams for the future.

### *A. Innovation: Redefining Human Trafficking Beyond the Criminal Law Context*

As human trafficking entered the public consciousness, rhetoric focused on traditional narratives of women and girls in need of rescue by patriarchal forces.<sup>31</sup> This rhetoric strongly influenced how the United States has responded to trafficking over the past sixteen years, shifting the discussion from empowerment and human rights to over-criminalization of the issue and an overt and sometimes lurid focus on sex work.<sup>32</sup> Human rights investigations have countered the standard narrative that police raids are an effective method of “rescuing” sex workers.<sup>33</sup> Raids on sex work establishments have long been problematic for trafficked people, as they often do not address underlying vulnerabilities such as homelessness or unemployment.<sup>34</sup> Raids themselves can be a cause of trauma and hamper efforts to identify trafficked people.<sup>35</sup> The “Victim-Centered Approach” widely touted in the United States seeks to balance the needs of criminal investigations with the needs of the victims, but this approach is nearly impossible to implement where a trafficked person has been taken into government custody.<sup>36</sup> As stated by the UN Special Rapporteur on Trafficking

- 
31. The “Rescue Model,” focusing on “rescuing” women through raids on brothels by police forces accompanied by Christian aid non-profit groups, was largely developed and championed by the International Justice Mission and related organizations. See, e.g., *IJM & U.S. Homeland Security Assist Rescue of Six-Year-Old Day Before Her Birthday*, INT’L JUST. MISSION (Dec. 11, 2015), <http://news.ijm.org/ijm--us-homeland-security-assist-rescue-of-6-yr-old-one-day-before-birthday/>.
  32. Perhaps the most extreme example of the rescue approach appeared in the cancelled televised reality series *8 Minutes*, which depicted the efforts of one activist to “rescue” sex workers. Emily Yahr, *A&E Pulls Heavily Criticized Show ‘8 Minutes,’ Which Claimed to Help Sex Workers Leave the Trade*, WASH. POST (May 5, 2015), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/05/05/ae-pulls-heavily-criticized-show-8-minutes-which-claimed-to-help-sex-workers-leave-the-trade/>.
  33. MELISSA DITMORE, SEX WORKERS PROJECT, *THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS* (2009).
  34. Dana Bruxvoort, *The Untold Side of Raids and Rescues: Rethinking Anti-Trafficking Efforts*, HUM. TRAFFICKING CTR. (Jan. 29, 2014), <http://humantraffickingcenter.org/posts-by-htc-associates/the-untold-side-of-raids-and-rescues-re-thinking-anti-trafficking-efforts/>; see also Maggie Jones, *Thailand’s Brothel Busters*, MOTHER JONES (2003), <http://www.motherjones.com/politics/2003/11/thailands-brothel-busters>.
  35. One of the most widely used guidelines on screening potential victims of trafficking focuses on how to minimize traumatic response. VERA INST. OF JUSTICE, *SCREENING FOR HUMAN TRAFFICKING: GUIDELINES FOR ADMINISTERING THE TRAFFICKING VICTIM IDENTIFICATION TOOL (TVIT)* 6–7 (2014), <http://www.vera.org/sites/default/files/resources/downloads/human-trafficking-identification-tool-and-user-guidelines.pdf>.
  36. VERA INST. OF JUSTICE, *supra* note 35, at 7.

in Persons, trafficking victims in the United States are often seen primarily as “instruments of criminal investigation, rather than as holders of rights.”<sup>37</sup>

Trafficked people and their advocates challenge this criminal justice response with the reality of their lived experiences, but it is difficult to overcome the entrenched rhetoric of rescue. Suggestions for changing the rhetoric came in several forms but largely focused on the empowerment of people vulnerable to trafficking through increased social, legal, and medical services. Establishment of community support programs or networks, such as the Urban Justice Center’s Sex Workers Project<sup>38</sup> or migrant workers’ organizations,<sup>39</sup> could be instrumental in offering trafficked people support to escape trafficking on their own terms, rather than being forcibly removed from the situation by the authorities. While there may always be situations when trafficked people need law enforcement assistance, most could be empowered to make their own escape through human rights approaches offering basic support.

#### *B. Innovation: Ending the Criminalization of Trafficking Victims*

Trafficked people are often subject to criminal penalties for acts they were forced to perform by their traffickers. The criminalization of activities such as prostitution or working without authorization follows a longstanding pattern of criminalizing poverty.<sup>40</sup> The overall criminal justice framework creates an unsafe environment for trafficked people who are subject to arrest and criminal penalties.<sup>41</sup>

In particular, survivors of trafficking in the sex industry often have criminal records because of the criminalization of most sex work. Expunging criminal records once defendants have been identified as trafficked has often been successful when implemented.<sup>42</sup> While the proposed gold standard for promoting sex workers’ human

37. Ezeilo, *supra* note 15, ¶ 61.

38. See generally SEX WORKERS PROJECT, <http://sexworkersproject.org/> (last visited Apr. 20, 2016).

39. See generally DAMAYAN MIGRANT WORKERS ASS’N, <http://www.damayanmigrants.org/> (last visited Apr. 20, 2016); FARM WORKER JUST., <https://www.farmworkerjustice.org/> (last visited Apr. 20, 2016).

40. See KAREN DOLAN & JODI L. CARR, INST. FOR POLICY STUDIES, THE POOR GET PRISON: THE ALARMING SPREAD OF THE CRIMINALIZATION OF POVERTY 7–8, 23–26 (2015), <http://www.ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf>; Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643 (2009).

41. The Human Rights and Gender Justice Clinic, formerly the International Women’s Human Rights Clinic, City University of New York School of Law, and the Trafficking Victims Advocacy Project, Legal Aid Society of New York detailed many of these problems in a shadow report to the UN Universal Periodic Review of the United States under the International Covenant on Civil and Political Rights. In particular, they highlighted criminalization of sex work, “broken windows” policing that targets vulnerable people at risk of trafficking, and the use of immigration detention. INT’L WOMEN’S HUMAN RIGHTS CLINIC, CUNY LAW SCH. & TRAFFICKING VICTIMS ADVOCACY PROJECT, LEGAL AID SOC’Y OF N.Y., CRIMINALIZATION OF TRAFFICKING VICTIMS 3–4 (2015), <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Criminalization-of-Trafficking-Victims.pdf>.

42. New York passed successful legislation allowing for the removal of trafficking victims’ criminal records in 2010. See, e.g., N.Y. Crim. Proc. Law § 440.10(1)(i) (Consol. 2010); see also SEX WORKERS PROJECT, VACATING CRIMINAL CONVICTIONS FOR TRAFFICKED PERSONS: A LEGAL MEMORANDUM FOR



## THE NEXT FIFTEEN YEARS

rights and preventing trafficking is the decriminalization of sex work—recently adopted as a policy position by Amnesty International<sup>43</sup>—the resulting controversy demonstrates that this position may not be politically feasible in many places.<sup>44</sup> Another innovative suggestion was to discount prostitution as grounds for immigration inadmissibility; currently, a non-citizen is prevented from obtaining a visa, adjusting her status, or becoming a U.S. citizen if she has engaged in prostitution within ten years of entering the United States.<sup>45</sup> While waivers of inadmissibility are available,<sup>46</sup> the fact that prostitution is a bar to legal immigration status in the United States contributes to the criminalization of trafficked people.

Undocumented migrant workers who have been trafficked are similarly criminalized if they enter the United States without being inspected or admitted<sup>47</sup> or if they were formerly removed and returned without authorization.<sup>48</sup> While unauthorized presence is not a criminal offense per se, an undocumented person apprehended prior to deportation likely experiences civil arrest and detention, similar to a criminal proceeding, prior to her removal from the United States.<sup>49</sup> The Supreme Court has stated that deportation is “a particularly severe ‘penalty’” and “intimately related to the criminal process.”<sup>50</sup> Thus, the fear of detection by authorities creates a situation where trafficked people are likely to distrust authorities and forms a barrier to accessing help.

Innovative suggestions from the symposium generally focused on further legislative efforts and advocacy around decriminalization, but some participants suggested advocating for policy changes within law enforcement agencies or court

---

ADVOCATES AND LEGISLATORS (2012); Juhu Thukral, *Erasing Criminal Convictions for Survivors of Trafficking: One Step in the Right Direction*, REWIRE (Sept. 20, 2012, 9:16 PM), <http://threalitycheck.org/article/2012/09/20/erasing-criminal-convictions-survivors-trafficking/>.

43. *Decision on State Obligations to Respect, Protect, and Fulfil the Human Rights of Sex Workers*, AMNESTY INT’L, <https://www.amnesty.org/en/policy-on-state-obligations-to-respect-protect-and-fulfil-the-human-rights-of-sex-workers/> (last visited Apr. 20, 2016); Catherine Murphy, *Sex Workers’ Rights are Human Rights*, AMNESTY INT’L (Aug. 14, 2015), <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>.

44. See, e.g., Katie Nguyen, REUTERS, *Amnesty Endorses Controversial Policy on Decriminalizing Sex Work* (Aug. 11, 2015, 1:44 PM), <http://www.reuters.com/article/us-rights-amnesty-sex-work-idUSKCN0QG1XA20150811>.

45. 8 U.S.C. § 1182(a)(2)(D) (2012). Ironically, the same section of the statute also renders traffickers inadmissible. *Id.* § 1182(a)(2)(H).

46. *Id.* § 1182(h).

47. *Id.* § 1325(a).

48. *Id.* § 1326(a).

49. The incidence of detention of migrants awaiting deportation has skyrocketed in the last decade, along with deportations. In particular, “the average length of detention was much longer for those in formal removal proceedings.” *Immigration Detention: Behind the Record Numbers*, CTR. FOR MIGRATION STUDIES (Feb. 13, 2014), <http://cmsny.org/immigration-detention-behind-the-record-numbers/>.

50. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893)).



programs where trafficked people may be identified. Positive examples of innovations that could be expanded, improved, or replicated include the Legal Aid Society's Trafficking Victims Advocacy Project, which provides services to people charged with prostitution offenses,<sup>51</sup> and the New York State Court System's Human Trafficking Intervention Initiative, which "connect[s] those arrested for prostitution to counseling and social services in lieu of jail-time."<sup>52</sup> The consensus was that advocates need to look at how basic criminalization and policing of marginalized people impacts vulnerability to trafficking and to incorporate that understanding into their work and advocacy.

### C. Innovation: Challenge the "Rescue" Model of Trafficking

The "rescue" model of trafficking has become ubiquitous despite a strong human rights critique of its framework.<sup>53</sup> The popular focus of the first sixteen years of anti-trafficking advocacy in the United States has largely been trafficking into sex work, at the expense of trafficking into traditional labor.<sup>54</sup> Much has been documented on the effect this bifurcation of the federal legal definition of trafficking has had on trafficked people, so I will not repeat much of it here.<sup>55</sup> In moving forward, most of the challenges to this situation are derived from the tenacity with which our culture clings to the rhetoric of "rescue," and how neatly some sex trafficking narratives fit into that structure.<sup>56</sup>

51. Kate Mogulescu, *Legal Aid Expands Program for Trafficking Victims*, LEGAL AID Soc'y (Mar. 22, 2013), <http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/legalaidexpandsprogramfortraffickingvictims.aspx>.

52. Chief Judge Jonathan Lippman, Remarks at the Citizens Crime Commission (Sept. 25, 2013), <http://www.courtinnovation.org/research/announcement-new-yorks-human-trafficking-intervention-initiative>.

53. See discussion *supra* Part IV.A.

54. The International Labour Organization estimated that in 2012, only twenty-two per cent of forced labor was forced sexual exploitation. INT'L LABOUR ORG., ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS AND METHODOLOGY 13 (2012), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf). For some examples of the critique that sexual exploitation has been addressed at the expense of labor trafficking, see Melissa Ditmore & Juhu Thukral, *To Address Human Trafficking, the United States Must Take a New Approach*, REWIRE (Oct. 2, 2012), <http://rhrealitycheck.org/article/2012/10/02/in-handling-sex-trafficking-crisis-president-obama-may-not-be-getting-it-right/>; Melissa Gira Grant, *The Truth About Trafficking: It's Not Just About Sexual Exploitation*, THE GUARDIAN (Oct. 24, 2012), <http://www.theguardian.com/commentisfree/2012/oct/24/truth-about-trafficking-sexual-exploitation>; Ryan Turner, *How Not to Talk About Human Trafficking*, HUM. TRAFFICKING CTR. (Jan. 21, 2014), <http://humantraffickingcenter.org/posts-by-htc-associates/how-not-to-talk-about-human-trafficking/>; and Janet Walsh, *Human Trafficking: It's Not Just About Sexual Exploitation*, HUM. RTS. WATCH (Nov. 6, 2014), <https://www.hrw.org/news/2014/11/06/human-trafficking-its-not-just-about-sexual-exploitation>.

55. See, e.g., Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 90–96 (2009).

56. See Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J.C.R. & C.L. 317, 343 (2007) ("Symbolically, 'trafficking' has regressed to stereotyped images of poor, uneducated, and helpless young women and girls, forced into prostitution, reminiscent of historical conceptions of 'white sexual slavery' at the turn of the twentieth century."); see also Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the*

## THE NEXT FIFTEEN YEARS

American culture is filled with examples of our self-identification as the hero saving the day for the helpless victim. The realities of actual trafficking, whether into sex work or traditional labor, are far more nuanced and push back against this standard narrative. Thus, ending misconceptions will involve understanding how trafficking into all forms of labor and services is really an extension of labor exploitation generally. Because this more nuanced understanding tends to critique American economic and legal structures rather than valorize “rescuers” within a context of privileged police power, shifting to this new understanding will be continue to be a challenge.

“Rescue” rhetoric influences several problematic legal approaches to trafficking.<sup>57</sup> The first is the overuse of criminal justice and law enforcement responses, as discussed earlier.<sup>58</sup> Anti-trafficking efforts located within the criminal justice system emphasize traditionally criminal acts such as prostitution, pimping, and assault. This makes significant practical sense when most of the law enforcement agencies at the table in trafficking cases have expertise in investigating and prosecuting vice and violent crimes. There is little room for the traditionally civil issues of unfair compensation and hazardous working conditions within that criminal justice framework, which means that labor trafficking cases are often not investigated or discovered.

A second problematic aspect of the “rescue” approach is that rescue interventions tend to normalize the limited options available to trafficked people. A common example is placing sex workers into low-wage garment or factory jobs after “rescuing” them.<sup>59</sup> This completely removes agency from the trafficked person by allowing her rescuer to decide what her best employment option is. Rather than expanding economic opportunities in order to lower the risk of trafficking, such interventions reinforce the status quo of exploitation in the workplace. No recognition is given to overlapping systems of oppression, and trafficked persons are thus often re-exploited.

Another variant of this normalization of limited options is the idea that “rescue” from sex or labor trafficking may help a person leave an exploitative or abusive situation but that assistance with the root problems of trafficking remains limited or non-existent. This type of rescue seeks only to return the person to the situation that led to her trafficking in the first place. Underlying vulnerabilities of poverty, lack of social status, lack of education, or lack of economic opportunities put the trafficked

---

*Trans-Atlantic Slave Trade*, 25 B.U. INT'L L.J. 207, 217 (2007) (noting that “white slavery existed more in public perception than reality,” but served as the basis for a number of international conventions, as well as the White Slave Traffic Act, also known as the Mann Act); Ronald Weitzer, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*, 35 POL. & SOC'Y 447, 467 (2007) (discussing the connections between the “white slavery” problem and the current depictions of sex trafficking victims in popular culture).

57. See generally Becky Owens-Bullard, *Take Off the Cape: Why Using the Word “Rescue” is Harmful to Anti-Trafficking Efforts*, COLO. COALITION AGAINST SEXUAL ASSAULT (July 24, 2014), [http://www.ccasa.org/take-off-the-cape/?utm\\_campaign=shareaholic&utm\\_medium=facebook&utm\\_source=socialnetwork](http://www.ccasa.org/take-off-the-cape/?utm_campaign=shareaholic&utm_medium=facebook&utm_source=socialnetwork) (discussing the overuse of the term “rescue” when dealing with human trafficking victims and the potential downfalls it creates).

58. See discussion *supra* Part IV.A.

59. See, e.g., *The High Cost of Cheap Clothes*, VICE, <http://www.vice.com/video/the-high-cost-of-cheap-clothes-198> (last visited Apr. 20, 2016).

person back at the same level of risk for trafficking. Such a “rescue” does nothing to help the person improve her life.<sup>60</sup>

A third important aspect of this cycle of “rescue” is that it requires the existence of recognizable trafficking victims.<sup>61</sup> The reality is that most trafficked people do not fit the description perpetuated by the rescue model of a helpless victim waiting for a savior. Many trafficked people escape their situations on their own, many are not physically restrained or locked up, and many may not identify as being enslaved or needing rescue. Furthermore, most trafficking victims do not fit the visual ideal of pretty young women in a brothel and thus are overlooked in rescue responses.<sup>62</sup> When the rhetoric focuses on rescue, the anti-trafficking responses are geared towards locating stereotypical victims, usually through police raids on suspected sites of sex work. This response privileges a semi-violent criminal justice approach that is largely unsuccessful at identifying trafficked people or helping those people find assistance.<sup>63</sup> For example, one study of sex workers found that thirty per cent of the reported abuse was at the hands of police.<sup>64</sup> This figure demonstrates that police may not recognize sex workers as trafficked and that sex workers may be extremely wary of any assistance offered by police.

In order to maintain funding streams for “rescue” responses, there must be data about the number and types of trafficking victims. This data often appears to support popular perceptions but rarely reflects the reality. The oft-repeated statistic that the average age of entry into prostitution is thirteen appears to support the existence of widespread commercial sexual exploitation of children, but that statistic is factually incorrect and misquoted.<sup>65</sup> Even some government reports rely on estimates from questionable sources, as demonstrated by the Government Accountability Office’s finding that unreliable data was used to support the United States’ 2006 estimate of

60. See Tom Corrigan, *Sex Workers Say ‘Life-Changing’ Relativity Show Never Delivered*, WALL ST. J. (Oct. 12, 2015), <http://blogs.wsj.com/bankruptcy/2015/10/12/sex-workers-say-life-changing-relativity-show-never-delivered/>.

61. For a particularly scathing critique of anti-trafficking awareness posters, see Laura Agustín, *Trafficking: The Globalisation of Weak Thinking and Dumb Language*, NAKED ANTHROPOLOGIST (Nov. 2, 2015, 12:00 PM), <http://www.lauraagustin.com/trafficking-the-globalisation-of-weak-thinking-and-dumb-language>.

62. See Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 187–203 (2007); see also Chang & Kim, *supra* note 56, at 320–41 (2007) (explaining the narrow conceptual focus of U.S. anti-trafficking policies and practices).

63. DITMORE, *supra* note 33, at 6, 48–49.

64. *Fact Sheet: Sex Work & Sexual Assault: Criminalization, Stigma, and Vulnerability*, SEX WORKERS OUTREACH PROJECT, <http://www.swopusa.org/wp-content/uploads/2015/05/FACT-SHEET-Sexual-Assault-Prevalence-Among-Sex-Workers-USA-final-Google-Docs.pdf> (last visited Apr. 20, 2016); see also Noy Thrupkaew, *A Misguided Moral Crusade*, N.Y. TIMES (Sept. 22, 2012), <http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html>.

65. Chris Hall, *Is One of the Most-Cited Statistics About Sex Work Wrong?*, THE ATLANTIC (Sept. 5, 2014), <http://www.theatlantic.com/business/archive/2014/09/is-one-of-the-most-cited-statistics-about-sex-work-wrong/379662/>; see also Glenn Kessler, *The Four-Pinocchio Claim That ‘On Average, Girls First Become Victims of Sex Trafficking at 13 Years Old,’* WASH. POST (June 11, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/06/11/the-dubious-claim-that-on-average-girls-first-become-victims-of-sex-trafficking-at-13-years-old/>.

## THE NEXT FIFTEEN YEARS

human trafficking.<sup>66</sup> Realistic data on the number and type of human trafficking cases has proven extremely difficult to locate, largely because existing data used to support claims of trafficking is inaccurate.<sup>67</sup> As a result, incorrect data is used to support programs that do little to address the real concerns of trafficked people. Until more accurate data that is reflective of the lived experiences of trafficked people is widely available, this significant problem will continue.

### *D. Innovation: Ending Demand for All Forms of Trafficking*

Panelists also discussed reinventing the dominant narrative of ending demand for trafficking. Several participants called for ending demand for all types of trafficked labor, not just sex work. These discussions had two primary themes: (1) focusing on the perpetrators of exploitation, rather than the types of labor or services performed, and (2) addressing the root causes of exploitation.

Many anti-trafficking advocates have called for “ending demand for prostitution” by further criminalizing buyers. The stated purpose of such measures is to eliminate the sex industry by ending the commercial demand for services. One of the successes of the “end demand” campaigns targeting the sex industry is that they shift the focus from the sex workers and traffickers to the customers who keep the sex industry going. The end demand campaigns frame customers as essential participants, without whom there would be no sex work. Thus, if sex work as an industry is exploitative, then the customers bear some responsibility, as does the legal system that identifies the sex seller as the criminal and often protects the buyer through lack of enforcement. Whether or not these programs are successful is a matter of some debate.<sup>68</sup>

Applying the “end demand” doctrine to labor trafficking situations means that the buyers of trafficking victims’ cheap labor and the cheaper products they produce are also inherently part of the trafficking system. Without the demand for cheap or unpaid labor, traffickers would not be able to sell their “product” of trafficked workers. The focus is now on the third parties in labor trafficking—the people demanding the cheap goods and services and those indirectly supporting the exploitation of workers. Now the social mechanisms that create vulnerabilities to trafficking, and the legal systems that keep such vulnerabilities in place, become clear.

---

66. U.S. GOV’T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 14 (2006); see also Jack Shafer, *More Mythical Numbers*, SLATE (Aug. 16, 2006), [http://www.slate.com/articles/news\\_and\\_politics/press\\_box/2006/08/more\\_mythical\\_numbers.html](http://www.slate.com/articles/news_and_politics/press_box/2006/08/more_mythical_numbers.html).

67. Glenn Kessler of the *Washington Post*’s *Fact Checker* blog has been one of the most prominent and independent critics of human trafficking data. See Glenn Kessler, *The Fishy Claim that ‘100,000 Children’ in the United States are in the Sex Trade*, WASH. POST (Sept. 2, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/09/02/the-fishy-claim-that-100000-children-in-the-united-states-are-in-the-sex-trade/>; Glenn Kessler, *Why You Should Be Wary of Statistics on ‘Modern Slavery’ and ‘Trafficking’*, WASH. POST (Apr. 24, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/04/24/why-you-should-be-wary-of-statistics-on-modern-slavery-and-trafficking/>.

68. *Compare Ending the Demand*, COALITION AGAINST TRAFFICKING IN WOMEN, <http://www.catwinternational.org/ProjectsCampaigns/Ending> (last visited Apr. 20, 2016), with Thrupkaew, *supra* note 64.

The end demand discussions also identified some of the root causes of trafficking, which are primarily systemic in nature. Unchecked capitalism has often led to exploitation of workers throughout history. Institutional marginalization of groups creates pools of potential victims. The lack of real economic alternatives forces people into vulnerable migration situations. These are all systemic causes of trafficking. Acknowledgment of these root vulnerabilities raises the discussion above debates of criminalization and “bad individuals doing bad things” to an examination of how the economic and social structures that we all participate in contribute to trafficking.

Significantly, these observations about the root causes of trafficking intersect with other movements for social and economic justice. When the dominant cultural self-identity is that of the global hero, it is difficult to gain support for a movement that places responsibility for trafficking on the very foundations of our society. This would be an insurmountable challenge for anti-trafficking advocates to undertake alone. As the anti-trafficking effort moves into its next phase, strategic links to other social movements will be key. Our voice can add to, and strengthen, the voices of those advocating for greater rights and protections for migrants, women, workers, people of color, sexual minorities, and the poor.

Collaboration by advocates across the spectrum of exploitation—from trafficking to worker exploitation and workplace discrimination—is critical to future innovations. Many of these fields are practically siloed, with advocates only working on their slice of the continuum. However, people do not experience only one form of exploitation. They may slide back and forth on the continuum as their circumstances change. Interrupting the process of exploitation will require advocates to work hand-in-hand along that continuum, understanding their role in the greater process of disruption.

Intersectionality is emerging as a cornerstone of anti-trafficking advocacy, and expanding alliances will serve trafficked people well. Prevention strategies such as economic development and labor protections in foreign states can garner many supporters outside the anti-trafficking arena. The future of anti-trafficking advocacy is working with other social justice movements to end the key vulnerabilities of trafficked people and prevent trafficking altogether.

## V. CONCLUSION

Reviewing and detailing all of these innovations gave me an incredible amount of hope for the continued growth of this human rights movement. The most memorable of the giant discussion sheets was entitled “Hopes and Dreams.” Listed below the title were “education,” “empowerment,” “human dignity and rights for all,” “challenge daily oppression,” and “eliminating barriers to safe employment and a living wage.” At its heart, this movement seeks to right the terrible wrongs that accompany the exploitation of the poor and vulnerable in our society. The more that public and private funding flows towards community-based organizations and intersectional partnerships developing human rights responses to trafficking, the stronger these innovative approaches will be. I hope that the seeds planted in these discussions take root and support the next generation of innovators.